IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,
Plaintiff,

v.

THOMAS E. ARNEY,
Defendant,

Court No.: 2:12cr105

and

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,
Garnishee.

MOTION TO DISMISS WRIT OF CONTINUING GARNISHMENT BY UNITED STATES OF AMERICA TO THE PRUDENTIAL INSURANCE COMPANY OF AMERICA AS TO THOMAS ARNEY AND BRIEF IN SUPPORT THEREOF

COMES NOW the United States of America and, Federal Rule of Civil Procedure 41(a)(2) and 28 U.S.C. §§ 3003(f) and 3205(c)(10), and hereby moves the Court to enter the attached proposed Order dismissing the Writ of Continuing Garnishment by United States of America to the Prudential Insurance Company of America as to Thomas Arney (ECF No. 793). The grounds for this motion are as follows:

1. The above-captioned garnishment proceeding was filed on December 18, 2015 pursuant to the Federal Debt Collection Procedures Act. 28 U.S.C. §§ 3001–3308 (the "FDCPA").

2. On December 18, 2015, the United States filed an Application for Writ of Continuing Garnishment (ECF No. 792) pursuant to 28 U.S.C. § 3205 seeking to collect criminal restitution owed by Defendant Thomas Arney from property held by the garnishee.

3. On December 18, 2015, a Writ of Continuing Garnishment (ECF No. 793) was issued.

4. The United States believes that the property sought to be garnished is subject to another lien which predates the restitution judgment.

5. Neither the defendant nor the garnishee was served with the writ. Accordingly, the defendant and the garnishee did not file any pleading in response to the writ.

6. The Federal Rules of Civil Procedure apply to proceedings under the FDCPA. 28 U.S.C. § 3003(f).

7. Federal Rule of Civil Procedure 41(a)(2) provides that an action may be dismissed at a plaintiff's request by Court Order, on terms that the Court considers proper.

8. Under 28 U.S.C. § 3205(c)(10)(A), a garnishment may be terminated by Court Order.

9. Dismissal of the Writ of Continuing Garnishment (ECF No. 793) is proper.

WHEREFORE, the United States requests that the Court dismiss the Writ of Continuing Garnishment (ECF No. 793).

Respectfully Submitted,

Dana J. Boente
United States Attorney

By: /s/ Gregory D. Stefan
Gregory D. Stefan, VSB # 40855
Assistant United States Attorney
Attorney for the United States of America
United States Attorney's Office
101 W. Main Street, Suite 8000
Norfolk, VA 23510
Telephone: (757) 441-6331
Facsimile: (757) 441-6689
E-Mail: greg.stefan@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that, on the 29th day of March, 2016, I will electronically file the foregoing and the proposed Order with the Clerk of the Court using the CM/ECF system, which will then send a notification of electronic filing (NEF) to all counsel of record.

/s/ Gregory D. Stefan
Gregory D. Stefan, VSB # 40855
Assistant United States Attorney
Attorney for the United States of America
United States Attorney's Office
101 W. Main Street, Suite 8000
Norfolk, VA 23510
Telephone: (757) 441-6331
Facsimile: (757) 441-6689
E-Mail: greg.stefan@usdoj.gov